SUPREME COURT, U.S.
No. 452
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, *et al.*,
Petitioners,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion and judgment of the District Court will be found at pages 7a to 26a of App. B to the petition for certiorari. It is reported in 140 F. Supp. 273. The findings of fact and conclusions of law of that Court are printed as Appendix B of this brief, p. 4a to 14a. The opinion of the Court of Appeals, as yet unreported, will be found in App. C, pages 27a to 42a, pet.

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1957, and appears in App. C to the petition for certiorari, page 42. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED[1]

1. Was respondent railroad entitled to injunctive relief in the United States District Court from a strike called by petitioner unions to require the railroad to continue the operation of one of its three railroad yards in Toledo, Ohio, when

a. there is no agreement between the railroad and the unions requiring that the yard or other operating facilities be maintained, and no notice or application had been made for such agreement,

b. such strike would seriously disrupt vital interstate commerce to the irreparable injury of both the railroad and the general public,

c. the unions and their members are left free to exercise all available remedies provided by the Railway Labor Act in the settlement of any prospective dispute which might arise from the effect, if any, of such closing, on rates of pay, rules or working conditions or terms or conditions of employment,

d. the railroad was and is ready and willing to discuss, negotiate, mediate or arbitrate any such prospective effect or dispute, and

e. the unions have failed and neglected to file any grievances or complaints with the National Railway Adjustment Board or to file formal notice with the Mediation Board for a rule or agreement covering such operations, which form of relief was suggested to them by the Mediation Board?

Embraced in the above inclusive question are the questions

[1]We are constrained to respectfully object to petitioners' statement of questions presented in that they are based upon conclusions and assumptions not supported by the facts nor are they such as were presented to the Court of Appeals.

1. Does the controversy concerning solely the closing of railroad's yard constitute a labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act?

2. Under the circumstances of this case, was the District Court barred by the provisions of the foregoing statutes from issuing an injunction against the strike?

3. Was effective relief by law or by an administrative agency available to railroad respondent to prevent such strike?

4. Did the District Court have jurisdiction of the subject matter?

STATEMENT

Respondent railroad brought this action in the United States District Court for the Northern District of Ohio, Western Division, to enjoin the petitioner brotherhood railroad unions and their officers from conducting a strike on railroad's lines West because of the closing of the North Toledo Interchange Yard of such railroad, and for a declaratory judgment that said unions have no right to interfere with the closing of the yard.

The complaint (R. 7-19) alleged that the "action arises under the laws of the United States regulating interstate commerce," and the jurisdiction of the court "is more specifically invoked as set forth hereinafter in paragraphs 21 and 26" (R. 9) and that the parties "are subject to the Railway Labor Act, the general purposes of which are stated in General Purpose (1) of Section 2 of the Railway Labor Act: 'to avoid any interruption to commerce or to the operation of any carrier engaged therein' " (R. 10). Paragraph 26 (R. 17) of the complaint alleged that, "by reason of the matters hereinabove set forth, the plaintiff is

entitled to immediate temporary injunctive relief against the defendants; to permanent relief *** under the Federal Declaratory Judgment Act, U.S.C., Title 28, Sections 2201 and 2202, and 49 U.S.C. 1 et seq. (Interstate Commerce Act), and other laws of the United States".

The complaint set forth the events leading up to the calling of the strike and alleged in detail extensive irreparable damage to the railroad and the general public. (R. 15-17) The matter was heard by the District Court, which granted the injunction enjoining and restraining defendant unions from striking to prevent plaintiff railroad from closing its North Toledo Yard and adjudging and decreeing that they have no right to interfere with such closing. (R. 59-60) The District Court gave a written opinion (pp. 7a-25a, App. B pet.) and based thereon made comprehensive findings of fact and conclusions of law.[1] (pp. 4a to 14a, App. B this brief R. 48-58.) The findings are clear, comprehensive and entirely supported by the evidence. They establish all allegations of the complaint. On appeal, the majority of the Court of Appeals affirmed the judgment of the District Court in a written opinion (pp. 27a-42a of App. C pet.) Circuit Judge Stewart dissented on the ground the District Court did not have jurisdiction of the subject matter.

The chief pertinent facts[2] are: For many years respondent has operated railroad yards in and in the vicinity of Toledo, Ohio. Its North Toledo Yard, prior to 11 o'clock P. M. on January 21, 1956, was operated and used for the receipt and interchange of freight cars from three other railroads. Respondent for many years had operated an-

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[1]Which petitioners entirely disregard in their petition excepting only for a very minor reference on page 5 of such petition.

[2]Found and established by the District Court in its finding of facts. (App. B this brief).

other yard, known as Stanley Yard just outside Toledo in Wood County, Ohio. (p. 6a App. B, R. 51)

On June 7, 1955, respondent notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard, and the interchange point with the other railroads would be changed from the North Toledo Yard to the Stanley Yard. On June 11, 1955, and July 7, 1955, respondent's officials and certain officers of the petitioning unions held meetings at which the closing of the North Toledo Yard and its effect on approximately thirty-five men there employed was discussed (pp. 6a, 7a, App. B, R. 51)

On July 7, 1955, the unions made application to the National Mediation Board for mediation services, stating that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. (Findings of Fact, p. 7a, App. B, this brief, R. 51-53) The Mediation Board intervened and found that there was no agreement between the respondent carrier and any organization requiring the maintenance of the yard in question; that no request had been made by the unions for such agreement; that in the absence of such an agreement, the Board did not have jurisdiction; and that if any arbitrary changes were made in agreements covering allocation of services of the employees, such action would constitute a violation of those agreements and would be referable by the unions to the National Railroad Adjustment Board. (Findings of Fact, p. 9a, App. B, this brief, R. 51-55; Op. Court of Appeals, p. 28a App. C, pet.)

The District Court found that the strike ordered by unions was called to require railroad to continue the operation of its North Toledo Yard, and that such dispute does not involve terms or conditions of employment. (Findings of Fact, par. 22, p. 11a, App. B, this brief; R. 55)

The District Court found **that the *respondent carrier* was ready and willing at all times to discuss, negotiate, mediate or arbitrate with petitioning Brotherhoods the problems which may grow out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard operation and *fully cooperated with and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act.*** (Findings of Fact, p. 11a App. B this brief; R. 56; Op. District Court, R. 41, p. 17a App. C pet.)

The trial court also found that the petitioners did not file any specific grievances or complaints with the National Railroad Adjustment Board as suggested to them by the Mediation Board, and that *no effective relief by any administrative agency is available to respondent railroad.* (Findings of Fact and Conclusions of Law, pp. 11a, 14a, App. B this brief; R. 56; Op. District Court, pp. 17a, 18a, App. C pet.) The Court of Appeals specifically affirmed such conclusion and finding. (C. of A. Op. p. 33a, App. C pet.)

The District Court further found that no labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act exists between the parties with respect to the right of the railroad to close its North Toledo Yard. (Findings of Fact and Conclusions of Law, p. 14a, App. B this brief; R. 58). This was specifically affirmed by the Court of Appeals. (C. of A. Op. p. 31a, App. C pet.)

The evidence regarding irreparable damage to both the respondent railroad and the general public is specific, comprehensive and uncontroverted. It establishes as the District Court found (Findings of Fact, pp. 12a, 13a App. B this brief and R. 56-57; also see C. of A. Op. pp. 28a-30a App. C pet.) that the strike ordered by petitioning Brotherhoods would if it transpired cause:

The laying off of approximately 2,516 employees

in the Toledo terminal area, resulting in wage loss to employees in excess of $34,800.00 for each day of such strike.

Embargo of shipments into and out of the Toledo terminal area, depriving 207 industries in Toledo and vicinity of service by rail, by respondent railroad.

The prevention of interchange by respondent with The Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railroad Company, the New York, Chicago, and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, serving 228 industries in Toledo and vicinity.

The prevention of transportation of mail by rail into and out of Toledo through railroad's Central Union Terminal, approximating 15,582 sacks per day.

The paralysis of all operations of said railroad between Toledo and all points on its Western District, being its principal lines from Buffalo to Chicago, and from Toledo to Charleston, W. Virginia, necessitating the laying off of approximately 16,361 employees in addition to those mentioned in the Toledo Terminal area, resulting in a total daily wage loss to said employees during each day of such strike in the approximate amount of $231,575.00.

The disruption of passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use Cleveland's Union Terminal, and the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00.

The disruption of passenger train operation of

The Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railroad Company, and The Wabash Railroad Company, which use respondent's Central Union Terminal at Toledo. Also disruption of the passenger train operations of the Grand Trunk Railway System which uses respondent's South Bend, Indiana, passenger station, and also those of the Pennsylvania Railroad Company which uses railroad's Erie, Pennsylvania passenger station, and also those of the New York, Chicago and St. Louis Railroad Company, which uses respondent's LaSalle Street Station and trackage at Chicago, Illinois.

The impediment of passenger and freight operations of other railroads which have and use trackage rights over certain sections of said Western District, and also the operations of connecting carriers.

The stoppage of service to approximately 2,180 industries located on said Western District of respondent's railroad, many of which are engaged in the manufacture of goods essential to our economy.

The stoppage of service to approximately 110 industries which do not have sidetrack connections, but which utilize railroad's team track facilities.

Accordingly the District Court found that irreparable damage would be caused both the railroad and the general public by such strike (D.C. Op. pp. 12a-14a, and C. of A. Op. pp. 28a-30a, App. C pet; R. 36-38, also p. 14a App. B, this brief).

REASONS FOR DENYING WRIT

It is respectfully submitted the writ should be denied for the following reasons:

1. There is no question of federal law which has not been but should be settled by the Supreme Court.

2. The decisions and judgments of the District Court and Court of Appeals are not in conflict with applicable decisions of the Supreme Court.

3. They are not departures from the accepted and usual course of judicial proceedings.

4. They are not such as call for the Supreme Court's power of supervision.

ARGUMENT

1. *Any controversy over the closing of the North Toledo Yard is not a labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act.*

2. *Rather it is one over which petitioners do not have the right to strike due to the circumstances of the case and the respective duties of the parties under the Railway Labor Act and Part I of the Interstate Commerce Act.*

There are two distinctly separate matters for consideration.

The first is the closing of the North Toledo Yard.

The second, the effect, if any, upon rates of pay, rules, or working conditions or terms or condition of employment, of railroad employees collectively represented by the petitioning Brotherhoods.

The first is for the determination of railroad management. The second is not before the Court.

The railroad asked and the District Court granted an injunction enjoining petitioners from striking solely because of the closing of the yard (R. 17, 18, 59, 60, 71, 73).

The injunction granted in no way forecloses the petitioners from any disputes which might arise from the second matter above stated. There is no rule or agreement requiring the maintenance of the yard in question or other operating facilities, either in perpetuity or for any length of time (R. 55), and no request for such rule or agreement had been made by petitioners (R. 53, 165-172).

The strike ordered and called by the unions was so threatened and called to require the railroad to continue operation of its North Toledo Yard (R. 55). The dispute actually in the case (the first matter above set forth) does not involve terms or conditions of employment (R. 56).

The railroad was and is ready and willing to discuss, negotiate, mediate or arbitrate any dispute relating to rates of pay, rules or working conditions or terms or condition of employment, which might arise from the closing of the yard (R. 56).

In actual effect, petitioners would not mediate, negotiate or arbitrate anything for they consistently followed the course that, if the yard was closed they would strike. Furthermore, that is just what happened for on two different occasions the railroad announced a closing and on two different occasions, the Brotherhoods called a strike (R. 159, 160, 163, 164), even though the railroad was willing to discuss and negotiate any labor questions arising from the closing (R. 56).

The Brotherhoods maintained that they have the right to tell the railroad whether or not it may close its yard, entirely "aside from" any labor questions (R. 80).

As the District Court so well stated in its opinion, such action "is placing the right to strike on an invalid ground, a ground that is untenable" (R. 42).

The Brotherhoods say in their petition (p. 9) that "they have exhausted all remedies available to them under the Railway Labor Act". Respondent most earnestly disagrees. The Mediation Board told the petitioners (R. 53), that,

> "It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement",

and further stated to them (R. 53),

> "Arbitrary changes, if any, in Memorandum Agreements * * * covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board."

The District Court found from uncontroverted evidence that petitioners "filed no specific grievances or complaints with the Railway Adjustment Board as suggested by said Mediation Board" (R. 56, p. 11a App. B, this Brief). Nor did they file any request for a rule or new agreement (R. 165-172). Rather they called the strike which the District Court enjoined.

Petitioners ignored entirely the provisions of the Railway Labor Act, which provide facilities available to them for the settlement of any "labor disputes". The closing of the yard, of itself, does not involve a "labor dispute". The effects of the closing might. All of the effects of the closing which may embrace the elements of a legitimate "labor dispute" come under the administrative remedies and procedures of the Railway Labor Act. The "labor dispute" matters are the proper concern of the Brotherhoods. In the absence of any agreement or rule requiring operation and maintenance of the yard, as is the case here (R. 52, 55), and in the absence of formal notice to the Mediation Board for such a rule or agreement (R. 52), the closing of the yard is solely the business and concern of management. Be-

cause there is made available to the petitioners the facilities for the settlement of all questions concerning rates of pay, rules, or working conditions and all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions, it is the duty of the Brotherhoods to make use of such facilities before striking. To strike, without first making use of such facilities, is a violation of the clear intent and purposes of the Railway Labor Act. To hold otherwise is to hold that it is of no actual effect; that the important substantial amendments of 1934 added nothing to the original acts of 1920 and 1926 and that the petitioning Brotherhoods may disregard the provisions of the 1934 Act with impunity.

The Supreme Court has held in a long line of cases that the federal courts shall enforce and apply the Railway Labor Act and are not prevented from doing so by the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana R.R. Co.*, 353 U.S. .. (March 25, 1957) 1 L. Ed. 2d, 622; *Brotherhood of Railroad Trainmen, et al. v. Howard, et al.*, 343 U.S. 768, 774 (1952); *Graham et al. v. Brotherhood of Locomotive Firemen and Enginemen*, 338 *U.S.* 232-239-240 (1940); *Steele v. L. & N. R. Co., et al.*, 323 U.S. 192 (1944); *Tunstall v. Brotherhood of L. F. & E., et al.*, 323 U.S. 210 (1944); *Virginian Ry. Co. v. System Fed. No.* 40, *etc. et al.*, 300 U.S. 515, 562-563, (1937).

Of significance is a statement by then Representative LaGuardia, one of the co-authors of the Norris-LaGuardia Act, on the House floor in debate on the Railway Labor Act of 1926 which is quoted by the United States Supreme Court in the case of *B. R. T. etc., et al. v. Toledo, P. & W. R. Co.*, 321 U.S. 50, at page 59, (1944), as follows:

> " 'The workers could not and would not think of going on strike before *all the remedies provided in the law* have been exhausted. *If the railroads have com-*

plied, they would not, as has been suggested (by Representative Beck), be deprived of any relief which they may have in law or equity.'" (Emphasis added by Court)

In the present case the District Court found that the respondent railroad had fully complied with "all requirements of the Railway Labor Act" (R. 56, p. 11a App. B, this brief, Findings of Fact).

Of special interest are the two recent decisions of the Supreme Court, *B. of R. T. et al. v. C. R. & I. Rd. Co. et al.*, 353 U.S. . ., 77 S. Ct. 635 (March 1957), and *Manion v. K. C. Term. Ry. Co.*, 353 U.S. . ., 77 S. Ct. 706.

While these cases are not directly in point, they establish applicable basic principles.

They establish the basic principle that the provisions and facilities of the Railway Labor Act in labor disputes can not be ignored or by-passed either by the railroads or their employees acting collectively through their unions before seeking injunctive relief or striking.

In the instant case the respondent railroad "followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act". Petitioners did not. (Findings of Fact R. 56 p. 11a App. B, this brief).

In the *Chicago River* case (supra) the strike was called over twenty-one specific grievances then pending before the Railroad Adjustment Board.

In the *Manion* case (supra) the strike was over specific time claims filed by a large number of engineers and firemen which either the railroad or union could take to the Adjustment Board and which neither did.[1] Also involved were specific proposed changes to agreements, and the railroad had declined to follow the recommendation of

[1] In the present case no specific complaints were filed with the respondent which it could take to the Adjustment Board.

the Mediation Board. It is significant that this Court remanded the *Manion* case without prejudice to reinstate the injunction if disputes are submitted to the Adjustment Board.

In the *Manion* case the railroad could submit the matter to the Board while in the present case it can not. Nor is there a "major dispute" which it could submit to the Mediation Board since no rule or agreement had been requested by petitioners.

We are mindful of foot-note 24 to the Court's opinion in the *Chicago River* case to the effect that in *B. of R. T. etc., et al. v. Toledo, P. & W. R. Co.*, 321 U.S. 50, the Norris-LaGuardia Act was held to prevent the issuance of an injunction in a railway labor case involving a "major dispute", and that in such a case, the Railway Labor Act does not provide a process for a final decision like that of the Adjustment Board in a "minor dispute" case.

It is true the Railway Labor Act does not provide a process for final decision in a "major dispute". In the present case, however, the Brotherhoods did not ask for a new rule or agreement although that was suggested to them by the Mediation Board. Lacking such request, there is no "major dispute" under the Act. (R. 53-55)

It should also be noted that in the *Toledo P. & W. R. Co. case* (supra), the railroad had refused to submit a "long continued labor dispute relating to working conditions and rates of pay" to arbitration and because of that the Court denied it injunctive relief. It indicated rather plainly, however, that had it done so, it would have been so entitled. (321 U.S. 50 at pp. 59-61)

The principle set forth by the *B.R.T. v. Toledo, etc.* case is that if "every reasonable effort * * * either by nego-

tiation or with the aid of any available governmental machinery of mediation or voluntary arbitration" has been made to settle the matter, the complaining party should be entitled to relief.[1] The Court considered at some length the Norris-LaGuardia Act.

To answer the question in the present case whether the Norris-LaGuardia Act prohibits the injunction requires the determination of what constitutes a "labor dispute" under the provisions of that Act, for in order to apply and limit the Court's jurisdiction the controversy before the Court must be a "labor dispute" (29 U.S.C. § 104).

The Norris-LaGuardia Act concerns itself solely with labor disputes. The controversy must concern "terms or conditions of employment".

The present controversy is solely concerning the closing of the yard itself. The unions have not asked the railroad nor the Mediation Board to negotiate or arrange any new agreements to cover terms or conditions of employment. Hence this is not a "labor dispute" and the Norris-LaGuardia Act does not apply.

The Norris-LaGuardia Act, which was enacted two years before the important 1934 amendments to the Railway Labor Act, was not passed to provide against such an injunction as has been asked for and granted in the present case. It was passed to protect against wide usage against labor unions of the Sherman and Clayton Anti-Trust Acts and to curtail the use of so-called "yellow dog" contracts. [S. Rep. 163, and H. Rep. 669, 1st Session, 72nd Congress, particularly pp. 11, 16-18 of S. Rep. 163]. The Senate Report stated, (p. 11), "It is not sought by this bill to take away from the judicial power any jurisdiction to restrain

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[1]The District Court found respondent always ready and willing to negotiate or arbitrate all labor dispute problems growing out of the yard closing (Findings of Fact, p. 11a, App. B this brief).

by injunctive process, unlawful acts or acts of fraud or violence".

None of the cases cited by petitioners on the question of what constitutes a labor dispute involve railroads or the Railway Labor Act.[1]

It is noteworthy that this Court in foot-note 2 to the opinion in the recent important case of *B. of R. T. et al. v. C. R. & I. Rd. Co. et al.*, 353 U.S. . . ., 77 S. Ct. 635, 636, stated:

> "The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act. * * *".

The basic reason is, of course, the direct and important relationship which such industry bears to the public welfare.

Considering the cases presented by petitioners, we first note *Hunt et al. etc. v. Crumboch, et al.*, 325 U.S. 821 (1945) which is not pertinent as it was brought on an alleged violation of the Sherman Act (26 Stat. 209; U.S.C. Title 15, §§ 1-7) and in no way involved the Railway Labor Act or a railroad.

United States v. Hutcheson, et al. 312 U.S. 219 (1941) was a criminal case brought under the Sherman Act. The court held a "labor dispute" involved. There was no carrier by rail. *United States v. Carrozo, et al.* 37 F. Supp. 191, (1941) was also a Sherman Act criminal case with no carrier by rail involved. The same was the situation in

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[1]On all other questions petitioners refer to only three railroad cases, e. g., *B. R. T. v. C. R. & I. R. R. Co., B. R. T. v. T. P. & W. R. Co.*, and *Manion v. K. C. Term*, which we have discussed (*supra*).

United States v. International Hod Carriers, etc., et al. 313 U.S. 539, (1941) and *United States v. American Federation of Musicians*, 47 F. Supp. 304 (1942). Neither the Railway Labor Act nor the Interstate Commerce Act was in these cases. *Diamond Full Fashion Hosiery Co. v. Ledder, et al.*, 20 F. Supp. 467, (1937), did not concern interstate commerce by rail or the Railway Labor Act. True it did involve the shutting down of defendant's plant and transferring its machinery from New Jersey to North Carolina which the court held was a "labor dispute" and so within the provision of the Norris-LaGuardia Act.

District Judge Kloeb in commenting on the *Diamond Hosiery* case stated (p. 21a, App. B, pet.), "In this case there was no public carrier involved, no administrative procedure available for the settlement of the dispute such as the Railway Labor Act in the instant case, and there was no vital public interest at stake in determining the issue".

Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products, Inc., et al., 311 U.S. 91, (1940), was an action under the Sherman Act. It was against such actions the Norris-LaGuardia Act was specifically passed. It involved a "labor dispute" but in no way concerned interstate commerce by rail, or the Railway Labor Act. *United Electrical Coal Companies v. Rice, et al.*, 80 F. (2d) 1 (1935) (C.C.A. 7, cert. den. 297 U.S. 714), while holding that the term "labor dispute" should be broadly and liberally construed, held that under the facts of that case no "labor dispute" existed. *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, did not involve interstate commerce or the Railway Labor Act.

In considering such cases it is noteworthy that no effective administrative facilities or procedures were available to the employees or their unions as in the Railway Labor Act.

As most cogently stated by the Supreme Court in *B. of R. T. et al. v. C. R. & I. Rd. Co., et al.*, 77 S. Ct. 635, 640-41 (1957),

> "Such controversies (railroad labor) therefore, are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative."

3. *No effective relief by law or by an administrative agency was available to respondent to prevent the strike and the resultant irreparable damage.*

The District Court so found (R. 58, p. 14a App. B, this brief). The Court of Appeals affirmed (pp. 32a-34a, App. C, pet.)

We find two statements by petitioners which confuse us (Pet. pp. 18-19). In one they state that the Court of Appeals holds "that the railroad was not required to exhaust *the procedures available under the Railway Labor Act* for settlement of the controversy prior to seeking an injunction *because such procedures do not apply to the dispute* involved" (emphasis supplied) They furnish no specific reference to the Court's opinion to support this statement. As we read the Opinion it clearly affirms the District Court's that the dispute solely over the closing of the yard in question is not a labor dispute and that under the circumstances of the case, there is no effective relief available to the railroad other than the court action taken. In other words, rather than as petitioners put it, there were no remedies available for the railroad to exhaust.

The other confusing statement by petitioners is that the railroad refused to negotiate the dispute. (Pet. 19) There is no such finding of fact. To the contrary the District Court found the railroad was always ready and willing to negotiate or arbitrate all problems relating to work

or labor matters growing out of the yard closing, and that the railroad followed all suggestions of the Mediation Board and all requirements of the Railway Labor Act (R. 56).

Petitioners do not make it entirely clear whether their statement applies to the *sole* question of closing the yard or to the closing and the effects if any of such closing on labor matters. We must assume because of the record that they contend they have the right to strike *solely* because of the closing, entirely separate from any questions regarding terms or conditions of employment, rates of pay, rules or working conditions, as they did at the trial. (R. 80)

The single matter of closing was not a labor dispute as it was separated from questions of terms and conditions of employment (R. 55, 56, 71, 73).

Accordingly, the Mediation Board did not ask the parties to arbitrate this separate question of closing but held it had no jurisdiction and closed its file because there was no agreement requiring continued operation of the yard. The Brotherhoods did not ask for a rule or new or amended agreement, and declined to designate or file with the Railroad Adjustment Board any specific grievances because of any claimed maladjustments or effects upon terms or working conditions by reason of the closing (R. 53, 55, 158-9, 161-2).

The petitioners, completely disregarding the administrative facilities provided by the Railway Labor Act for the settlement of all labor dispute matters which might arise from the closing of the yard, have maintained that the railroad had no right to close its yard and transfer its interchange to another yard, simply saying in effect, "you close, we strike".

Under the circumstances the railroad could not ask for arbitration on the question of closing alone, nor did the Mediation Board ask it to do so. In no way could that furnish any proper effective relief. Nor could the railroad have effectively asked for an Emergency Board. The Mediation Board did not ask for such a Board. The calling of such a Board is left to the full discretion of the President after recommendation by the Mediation Board (45 U.S.C. 160).

Faced with such a situation on a matter not subject to arbitration, which the Mediation Board so found, the railroad's only effective recourse was the District Court.

4. *The District Court had jurisdiction of the subject matter.*

The District Court so held (R. 58). The Court of Appeals with one Judge dissenting held likewise (Opinion, pp. 34a-42a, App. C, pet.).

This case directly affects and concerns the rights and duties of both respondent railroad and petitioner unions under the Interstate Commerce Act and the Railway Labor Act. (49 U.S.C. §§1 et seq; 45 U.S.C. 151-163; also see Judiciary Act, 28 U.S.C. §§1331; 1337). It calls for the interpretation and application of these Acts. It involves protecting interstate commerce from drastic disruption and the public from irreparable harm and injury.

The case arises under the pattern of the United States laws comprised of the Interstate Commerce Act, the National Railway Labor Act and the Norris-LaGuardia Act. (29 U.S.C. §§101-115) It does not arise in a claim for a right to close the North Toledo Yard. The railroad asks for the equitable protection of the court against irreparable dam-

age to it and to the public which would result from the strike.

The Court of Appeals in upholding jurisdiction discussed the question at some length (pp. 34a-42a, App. C pet.) relying to great extent upon the majority reasoning in *Toledo P. & W. R. Co. v. B. of R. T. etc., et al.*, 132 F. (2d) 265 (C.C.A. 7) Circuit Judge Stewart dissented upon the basis of then Circuit Judge Minton's dissent in the *Toledo P. & W.* case.

The Court of Appeals quotes the following pertinent statement from the majority opinion in *Toledo P. & W.*, 132 F. (2d) at p. 269:

> "Congress has seen fit to impose certain duties upon a common carrier engaged in interstate commerce; and the failure to perform such duties subjects the carrier to liability. It cannot be that Congress imposed duties, and yet intended that the carrier should be denied federal relief from interference with carrying out such duties."

Justice Minton's (then Circuit Judge) dissent merits comment. It appears to be based on the proposition that the railroad "seeks only the enforcement of a common law right" (132 F. (2d), at p. 273). *Actually it seeks to safeguard the performance of a duty directly required by Federal law,* i.e., the Interstate Commerce Act and the Railway Labor Act, and by such safeguard preventing irreparable damage to itself and the public.

Then Circuit Judge Minton gives *Niles-Bement-Pond Co. v. Iron Moulders Union, etc., et al.*, 254 U.S. 77, as authority for his position. *In that case however the plaintiff employer owed no duty to the general public required by a specific federal statute.* While its duty was to the U.S. Government it was a duty arising solely by private contract with the government.

It is worthy of note that the other ground for Circuit Judge Minton's dissent, e.g., that in a "labor dispute", where railroad had refused to arbitrate, it had not used every "reasonable effort" to exhaust its administrative remedies, was properly upheld by the Supreme Court. (321 U.S. 50). Also the following statement in Circuit Judge Minton's dissent is significant:

> "The law does not require a futile thing, and if there is a finding to the effect that efforts to negotiate, mediate or arbitrate would be futile, that would be one thing. No such finding is present in the case at bar." (132 F. (2d) at p. 274)[1]

Justice Frankfurter in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437,[2] decided March 28, 1955, said at page 450:

> "Almost without exception, decisions under the general statutory grants of jurisdiction strikingly similar to the constitutional wording, have tested jurisdiction in terms of the presence, as an integral part of plaintiff's cause of action, of an issue calling for interpretation or application of federal law. (Gully etc. v. First Natl. Bank in Meridian, 299 U.S. 109, 57 S. Ct. 96, 81 L. Ed. 70. Although it has sometimes been suggested that the 'cause of action' must derive from federal law, *it has been found sufficient that some aspect of federal law is essential to plaintiff's success.* (American Well Works Co. v. Layne V. Bowler Co., 241 U.S. 257, 260, 36 S. Ct. 585, 586, 60 L. Ed. 987. Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 41 S. Ct. 243, 65 L. Ed. 577.) *The litigation-provoking problem has been the degree to which federal law must be in the forefront of the case and not be remote, collateral or peripheral.*" (Emphasis Supplied)

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[1]See express findings in present case (R. 56, 58, p. 11a, App. B, this brief).

[2]In connection with *Westinghouse case*, see *Textile Workers etc. v. Lincoln Mills, etc.*, 353 U.S. ..., 77 S. Ct. 912, 917-918.

In the present case, the federal law involved is very much in the "forefront" of the case and is in no way "remote, collateral or peripheral".

Justice Frankfurter in his opinion refers to an article by Professor Paul J. Mishkin in 53 *Columbia Law Review*, 157, 196. The following conclusion to this article merits attention:

> "The use of the federal trial courts to protect a congressional program seems no less meet than their use to vindicate a specific federal right. In either area the national concern and policy are first established by congressional action. The balancing of competing values is not left to the predilections of each individual federal—rather than state—court, but is declared, at least generally, by Congress. The protective forum in such circumstances is then, principally, a shield for federal legislation. In a very real sense do all such cases 'arise under' the laws establishing the congressional plan, within the meaning of Article III."

The following cases support the basic jurisdictional principle in the instant case.

Smith v. Kansas City Title & Trust Co. et al., 225 U.S. 180 (1921), 199; *Textile Workers etc. v. Lincoln Mills*, 353 U.S. ..., 77 S. Ct. 912 (1957); *Goodall-Sanford, Inc. v. Textile Workers, etc., et al.*, 353 U.S. ..., 77 S. Ct. 920 (1957); *General Electric Co. v. United Electrical Workers*, 353 U.S. ..., 77 S. Ct. 921 (1957); *Virginian Ry. v. System Federation, etc., et al.*, 300 U.S. 515; (1937); *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, et al.*, 323 U.S. 210, 213; (1944); *City of Dayton, O. v. City Ry. Co.*, 16 F. (2d) 401 (C.C.A. 6) (1926); *W. H. Mount v. The Grand Intl. Brotherhood of Locomotive Engineers*, 226 F. (2d) 604, (C.C.A. 6, 1955, cert. den. 350 U.S. 967); *Thompson, Trustee, Mo. Pac. Ry. Co. etc. et al., v. St. Louis-San Francisco Ry. Co.*, 218 F. (2d) 166, 171 (1954) (C.C.A. 8, cert. den. 348 U.S. 964); *Regents of New Mexico College etc. v. Albuquerque Broadcasting Co.*, 158 F. (2d) 900 (C.C.A. 10)

(1947); *Costanzo Coal Min. Co. v. Weirton Steel Co.*, 150 F. (2d) 929 (1945) (C.C.A. 4, cert. den. 326 U.S. 765); and *Erie R. Co. et al. v. Local 1286, International Longshoremen's Ass'n. et al.*, 117 F. Supp. 157 (U.S.D.C., W.D., New York 1953).

In none of the cases cited by petitioners on the jurisdictional question, was the Railway Labor Act involved. No carriers by *rail* in interstate commerce were parties.

Petitioners do cite three Motor Carrier cases, two in the Federal Courts and one before the Interstate Commerce Commission, but they are not applicable. In the first place Motor Carriers are not under the Railway Labor Act. Further, the provisions of the Motor Carrier Act, Part II of the Interstate Commerce Act (49 U.S.C. § 301 et seq), are not the same as those applicable to carriers by rail, Part I I.C.A. (49 U.S.C. § § 1-300), particularly as to the duties and obligations to serve the public. While generally speaking they have the same general duties, the obligation of carriers by rail is greater. (Cf. 49 U.S.C. § § 304 (a) (1), 316 (a) (b) applicable to motor carriers with 49 U.S.C. § § 1 (4), (14), (15), (21) and § 8 applicable to rail carriers).

In *Lee Way Motor Freight, Inc. v. Keystone Freight Lines, Inc.*, 126 F. (2d) 931, (1942), cited by petitioners, the question was whether the Norris-LaGuardia Act was applicable, and if so it barred jurisdiction. The Court held the matter in controversy a "labor dispute", and accordingly it was without jurisdiction.

East Texas Motor Freight Lines v. International Brotherhood of Teamsters, etc., 163 F. (2d) 10, (1947), also cited by petitioners, was an action to restrain defendant unions on the ground they had entered into an unlawful conspiracy to boycott and in restraint of trade in violation of the Sherman Act. The trial court found no conspiracy and also that the matter grew out of a "labor dispute", and

ccordingly jurisdiction barred by the Norris-LaGuardia Act.

It is submitted that the present case meets the jurisdictional tests set out in the federal statutes and the decisions of the Supreme Court. The subject matter embraces a *substantial* question *directly* raised by the federal statutes hereinbefore referred to, particularly the Interstate Commerce and Railway Labor Acts.

CONCLUSION

The respondent railroad, following all requirements of the Railway Labor Act, was faced with a strike by petitioners, called because of the closing of one of its exchange yards and the transfer of such operations to another yard in Toledo, Ohio, when there was no agreement requiring maintenance of such yard and regardless of the fact that the railroad was ready and willing to negotiate, mediate or arbitrate any matters relating to labor conditions which might result from such closing. The petitioner unions would not file any specific grievances or complaints or request a rule or new agreement as suggested to them by the Mediation Board insisting in effect they had the right to strike solely because of such closing. Such called strike would cause extensive irreparable damage to both the respondent railroad and the general public.

With no effective administrative relief available to it, respondent applied to the local District Court for an injunction against the petitioners striking because of the closing only. After full hearing this was granted. The Court rendered a comprehensive opinion and made specific findings of fact and conclusions of law which support fully the above statements and the order of the District Court. The Court of Appeals properly afffirmed.

It said in concluding its opinion:

"In the instant case the carrier sought protection

from interference with its right, *and the duty imposed by Congress upon railroad common carriers,* to furnish facilities for passengers or freight, and to engage in interstate commerce, in the service of the public. • • •

"In this case, in our view, no labor dispute exists. A strike would interfere with appellee as a common carrier of interstate commerce, *in the discharge of its duties which are imposed by federal law.* The district court had jurisdiction over the subject-matter of the suit. A railroad strike involving a controversy which does not constitute a labor dispute, may be, and properly is, enjoined upon a showing that it will interfere with interstate commerce and result in irreparable injury to the public and to the railroad. As the district court found, the railroad and public are faced with great and irreparable injury. On the findings of the district court, it is our conclusion that the injunction was properly issued." (Emphasis Supplied)

Because the decisions and findings of the District Court and the Court of Appeals are correct under the law and facts, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Pertinent Provisions of the Judiciary Act

Federal question; amount in controversy

28 U.S.C. § 1331. The district courts have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. (62 Stat. 930.)

Commerce and anti-trust regulations

28 U.S.C. §1337. The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. (62 Stat. 931.)

Applicable Provisions of the Interstate Commerce Act Part I relating to railroads

Regulations in general; car service; alteration of line—Carriers subject to regulation

49 U.S.C. §1 (1) The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;

• • •

(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; (24 Stat. 379; as amended 48 Stat. 1102; 49

Stat. 543; 54 Stat. 899; 62 Stat. 602; 63 Stat. 485; 66 Stat. 277)

Liability in damages to persons injured by violation of law.

49 U.S.C. §8 In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case. (24 Stat. 382, as amended 49 Stat. 543)

Part II relating to motor carriers

49 U.S.C. §.304 (a)

It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment. [Title I, § 101, 56 Stat. 176]

49 U.S.C. § 316

It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; * * *.

Rates, facilities for carriers of property

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; • • •. [Title I, § 22 (b-d), 54 Stat. 924]

Additional Pertinent Provisions of the Railway Labor Act

Conference of representatives; time, place; private agreements

45 U.S.C. § 152. Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held. (44 Stat. 577; 48 Stat. 1186; 62 Stat. 909; 64 Stat. 1238)

Pertinent Provisions of the Declaratory Judgment Act

28 U.S.C. § 2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (62 Stat. 964; as amended 63 Stat. 105)

Further relief

28 U.S.C. § 2202. Further necessary or proper relief

based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. (62 Stat. 964)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

No. 7493 Civil

Findings of Fact and Conclusions of Law
Filed: June 4, 1956

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al.,

Defendants.

1. The Plaintiff, the New York Central Railroad Company, is a consolidated railroad corporation organized and existing under the laws of the State of Ohio and other states, with places of business in Toledo, Ohio and elsewhere.

2. Prior to January 2, 1930, the Michigan Central Railroad Company operated into Toledo from the North. On January 2, 1930 the railroad and property of the Michigan Central Railroad Company were leased to the plaintiff, and as of the date of the said lease, the New York Central Railroad Company took over the operations formerly conducted by the Michigan Central including the operations from the North to Toledo, and ever since that date, the New York Central has conducted the railroad operations formerly conducted by the Michigan Central. At all times

material herein prior to February 13, 1952, the New York Central operated the railroad and property of the Toledo and Ohio Central Railway Company under lease. On February 13, 1952, the Toledo and Ohio was merged into plaintiff, the New York Central Railroad Company. Following the leasing of the Michigan Central to the plaintiff, a new agreement among the defendants Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Engineers, and the plaintiff, together with other Brotherhoods not parties hereto, effective August 5, 1932, was entered into, reallocating the work between former Michigan Central employees and New York Central employees. This agreement was amended by an agreement dated May 1, 1948.

3. Plaintiff is a common carrier by railroad within the meaning of that term as defined in the Railway Labor Act, U.S.C., Title 45, Sec. 151 et seq., and is engaged in the transportation of property and persons in interstate commerce within the jurisdiction of the District Court of the United States for the Northern District of Ohio, Western Division.

4. The defendants, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, are voluntary organizations and labor organizations within the meaning of the Railway Labor Act. Each of said defendant Brotherhoods consists of a Grand Lodge and many subordinate lodges, and each has its principal office in Cleveland, Ohio.

5. Said Brotherhoods are, and at all times material hereto have been, the recognized and acting collective bargaining representatives for all of plaintiff's employees who are classified as yard-men, switchtenders, baggagemen, brakemen, flagmen, locomotive firemen, helpers on other than steam locomotives, hostlers and hostler helpers.

6. The defendants other than said Brotherhoods are

all officers of said Brotherhoods, or of local lodges thereof, holding the official positions stated in the caption of the complaint herein as amended.

7. The amount in controversy exceeds the sum of $3,000.00 exclusive of interest and costs.

8. The plaintiff in the conduct of its business, employs the classes of employees mentioned in Paragraph 5 above and the plaintiff can not operate its railroad without the performance of the duties performed by said employees, all of whom are members of, or represented by one or the other of the defendant Brotherhoods as their collective bargaining representative.

9. The plaintiff for many years past has operated railroad yards in and in the vicinity of Toledo, Ohio. Its North Toledo Yard, prior to 11 o'clock P.M. on January 21, 1956, was operated and used for the receipt and interchange of freight cars from the Pennsylvania Railroad Company, the New York, Chicago and St. Louis Railway Company, and the Toledo Terminal Railroad Company. Plaintiff also for many years past has operated another yard, known as its Stanley Yard in Wood County, Ohio.

10. The members of said Brotherhoods are so numerous as to make it impracticable to bring them all before the court and this suit is brought against the class of said members.

11. On June 7, 1955, the plaintiff notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard, and that effective as of July 10, 1955, the interchange point with the above mentioned other railroads would be changed from the North Toledo Yard to the Stanley Yard.

12. On June 11, 1955, and on July 7, 1955, plaintiff's officials and certain officers of the defendants held meetings at which the closing of the North Toledo Yard and its

effect on approximately thirty-five men there employed was discussed.

13. On July 7, 1955, defendants sent to the National Mediation Board an application for mediation services under the provisions of the Railway Labor Act and stated therein that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. No request was made in the application for a change in any existing working agreements or for a new or supplemental agreement. On the same day, the Mediation Board wired plaintiff that they had received a telegram from defendants, reading as follows:

> "Serious situation existing New York Central Railroad Lines West at Toledo, Ohio as the result of the management arbitrarily closing North Toledo Yard without negotiations request your Board take immediate jurisdiction over this matter and notify Carrier to hold the matter status quo pending mediation proceedings. Letter follows."

14. On July 8, 1955, defendants filed an application for mediation services by way of a letter, which read in part as follows:

> "Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairman, representing the B. of L.E., B. of L.F. & E., and various other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interdivisional service between Michigan Central R.R. and The N.Y.C. R.R. Co., Lines West, as set forth in telegram this date."

15. On July 8, 1955, the Mediation Board wired plaintiff as follows:

> "We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that

service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two Committees at Toledo, Ohio. Organizations further claim that carrier has not complied with provisions of Section, Railway Labor Act in failing to serve formal Section 6 notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal docketing of such applications, we have assigned correspondence file C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise if this request will be complied with. Joint Horning, Brown, Gilbert and Kennedy. By direction of National Mediation Board."

Plaintiff wired the Mediation Board on the same day as follows:

"Receipt acknowledged your telegram requesting we defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by Board representative. We will comply with Board's request and hope Board will act promptly in the matter since we do not want to delay the closing of this Yard indefinitely. Our General Manager, R. H. McGraw, in Cleveland and General Manager E. C. Johnson in Detroit will represent carrier and I suggest conferences in Toledo."

16. Thereafter, mediation efforts were carried on by the Board with plaintiff and defendants without success and, on August 1, 1955, the Board wired plaintiff as follows:

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has consid-

ered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act by failing to serve formal notice of intention to close North Toledo Yard, also present status as reported by Mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in Memorandum Agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board. Joint Horning, Brown, Gilbert, Kennedy, MacSwan."

17. On August 2, 1955, plaintiff notified its employees that the North Toledo Yard would be closed on August 7, 1955.

18. On August 4, 1955, defendants wired the Mediation Board as follows:

"This is to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard Time Sunday August 7, 1955 New York Central West account management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

In reply to the above telegram, the Board wired plaintiff and defendants as follows:

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six am Eastern Standard Time Sunday August 7, 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Broth-

erhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions of Section Five First paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same day, plaintiff wired the Board as follows:

"Receipt acknowledged your wire date Case A-4923. We will cooperate with mediation efforts of Board this Case."

19. Following extended efforts on the part of the Board with representatives of plaintiff and defendants, the Board sent to plaintiff and defendants the following letter on December 16, 1955:

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier. 'Mediation services of the Board were proferred in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

20. On January 17, 1956, plaintiff notified its employees in writing that the North Toledo Yards would be closed at 11:00 P.M., January 21, 1956, and on January 19, 1956,

plaintiff received a telegram from the Board, reading as follows:

> "Following wire received date from Messrs. Kennedy and Gilbert Quote Employees of New York Central Lines West as represented by Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen authorised to withdraw from service in a legal strike effective 11:00 PM EST Saturday January 21, 1956 account of New York Centrals Notice closing North Toledo Yard at that time Unquote".

21. The agreements between plaintiff and said defendant Brotherhoods representing employees of plaintiff, contain no requirement that plaintiff maintain the North Toledo Yards either in perpetuity or for any length of time.

22. Said strike ordered and called by the defendant Brotherhoods was so threatened and called to require the plaintiff to continue the operation of its North Toledo Yard.

23. Such dispute between plaintiff and defendants does not involve terms or conditions of employment.

24. Plaintiff was ready and willing at all times hereinbefore specified and is still willing to discuss, negotiate, mediate or arbitrate with defendants the problems which may grow out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard operation. Plaintiff has at all times fully cooperated with, and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act. Defendants have filed no specific grievances or complaints with the National Railway Adjustment Board, as suggested by said Mediation Board in its telegram of August 1, 1955.

25. The strike threatened and ordered by said defendant Brotherhoods as hereinbefore recited, would if it trans-

pired, cause the following listed effects and consequences to-wit:

The laying off of approximately 2,516 employees in the Toledo terminal area, resulting in wage loss to employees in excess of $34,800.00 for each day of such strike.

Embargo of shipments into and out of the Toledo terminal area, depriving 207 industries in Toledo and vicinity of service by rail, by plaintiff railroad company.

The prevention of interchange by plaintiff with The Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railroad Company, the New York, Chicago, and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, serving 228 industries in Toledo and vicinity.

The prevention of transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day.

The paralysis of all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff from Buffalo to Chicago, and from Toledo to Charleston, W. Virginia, necessitating the laying off of approximately 16,361 employees in addition to those mentioned in the Toledo Terminal area, resulting in a total daily wage loss to said employees during each day of such strike in the approximate amount of $231,565.00.

The disruption of passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use Cleveland's Union Terminal, and the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00.

The disruption of passenger train operation of The

Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railroad Company, and The Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo. Also disruption of the passenger train operations of the Grand Trunk Railway System which uses plaintiff's South Bend, Indiana, passenger station, and also those of the Pennsylvania Railroad Company which uses plaintiff's Erie, Pennsylvania, passenger station, and also those of the New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago, Illinois.

The impediment of passenger and freight operations of other railroads which have and use trackage rights over certain sections of said Western District, and also the operations of connecting carriers.

The stoppage of service to approximately 2,180 industries located on said Western District of plaintiff's railroad, many of which are engaged in the manufacture of goods essential to our economy.

The stoppage of service to approximately 110 industries which do not have side track connections, but which utilize plaintiff's team track facilities at various locations in said Western District.

The prevention of the interchange of cars by plaintiff between its Eastern District and its Western and Northern Districts, and disruption of train service in plaintiff's Eastern District, and the laying off of numerous employees, and a substantial resulting loss of wages.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter and the parties to this action.

2. Plaintiff, the defendants, the Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Fire-

men and Enginemen, their officers and plaintiff's employees represented by said Brotherhoods, are subject to the Railway Labor Act.

3. No labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act exists between plaintiff and defendants with respect to the right of plaintiff to close its North Toledo Yard.

4. Plaintiff has a right to close its North Toledo Yard and the defendants have no right in any way to interfere with such closing.

5. The strike threatened and ordered by defendants to prevent such closing of North Toledo Yard, would cause irreparable damage to the plaintiff and to the public.

6. No effective relief by law or by an administrative agency of the United States Government is available to plaintiff to prevent such strike and such damage.

7. A permanent injunction against the defendants, and each of them, and any one acting by, through or for them, or on their behalf, restraining them, and each of them from threatening, calling or conducting any strike, work stoppage or any other act of economic coercion to prevent plaintiff from closing its North Toledo Yard, should be ordered and issued by this Court.

Frank L. Kloeb,

Judge